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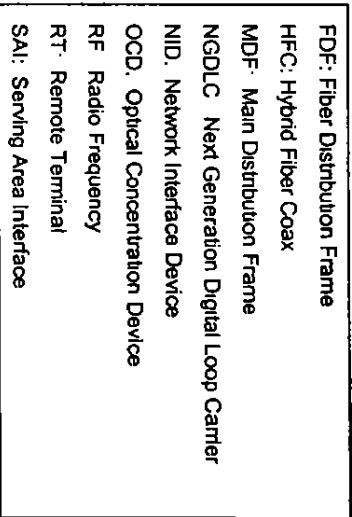
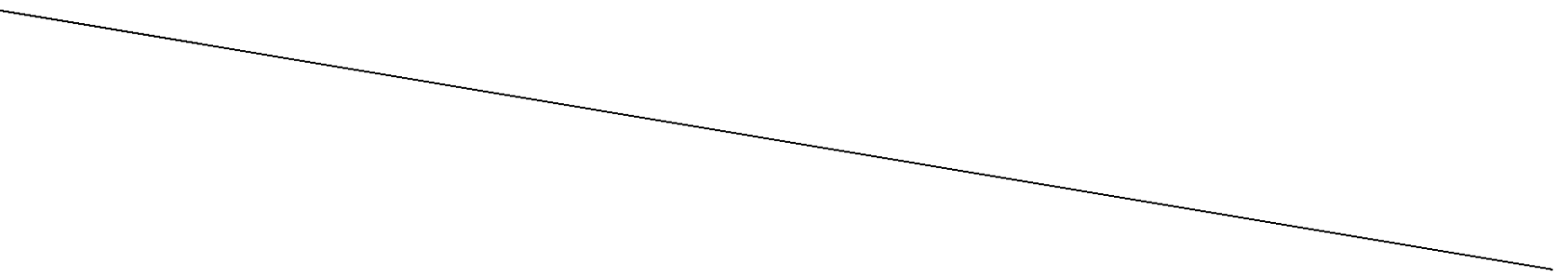


EXHIBIT C



Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

The Southern New England Telephone Company

FILE No. _____

Petition for Declaratory Ruling and Order Preempting the Connecticut Department of Public Utility Control's Decision Directing The Southern New England Telephone Company To Unbundle Its Hybrid Fiber Coaxial Facilities.

Declaration of John A. Andrasik

1. My name is John A. Andrasik, and I am over the age of 18.
2. I am currently the Director – Construction and Engineering of The Southern New England Telephone Company (“SBC Connecticut”) My business address is 1441 North Colony Road, Meriden, Connecticut.
3. I am familiar with SBC Connecticut's decommissioned hybrid fiber-coaxial (“HFC”) facilities, and have supervised the removal of various pieces of equipment and other facilities associated with this network
4. SBC Connecticut's HFC facilities, that are the subject of the Connecticut Department of Public Utility Control's (“DPUC”) decision have never been used to offer telecommunications services, and is not currently capable of supporting telecommunications services. The HFC facilities were constructed as an overlay network, separate and apart from SBC Connecticut's local exchange facilities. The HFC facilities are not part of SBC Connecticut's local telephone network.
5. Since the DPUC approved SBC Connecticut's request to abandon its plans to offer services over its HFC facilities, SBC Connecticut has taken down various portions of that

network. SBC Connecticut removed pieces of the network when removal was less expensive than maintaining the status quo, when it received specific requests to do so.

- 6 Over the last 5 years, SBC Connecticut has.
 - a. removed and sold the HFC RX-TX Splitters and the CATV Head Ends formerly located in its central offices;
 - b. removed more than 50 percent of the drops and network interface devices;
 - c. removed all of the batteries that previously provided back up power to the HFC facilities;
 - d. removed nodes and amplifiers when it was cheaper to remove this equipment than it was to relocate it; and
 - e. removed several hundred miles of coaxial cable.

7 In order to be rendered capable of supporting telecommunications, these facilities would need to be powered replaced and/or repaired. Additionally, the required modifications upgrades and/or equipment replacement are extraordinary, and are not of the type that SBC Connecticut has or would ever undertake on behalf of its own customers.

John L. ...

~~John A. Andrasik~~

Director – Construction and Engineering

STATE OF CONNECTICUT)

) ss. New Haven

February 9, 2004

COUNTY OF NEW HAVEN)

Subscribed to and sworn before:

Subscribed to and sworn before:

Commissioner of the Superior Court

STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC UTILITY CONTROL

PETITION OF GEMINI NETWORKS CT, INC. :
FOR A DECLARATORY RULING : DOCKET NO. 03-01-__
REGARDING THE SOUTHERN NEW :
ENGLAND TELEPHONE COMPANY'S :
UNBUNDLED NETWORK ELEMENTS : JANUARY 2, 2003

PETITION FOR DECLARATORY RULING

Pursuant to Connecticut General Statutes Sections 16-247a, 16-247b(a), 16-247k(b)(4), 16-11, and 4-176 and regulations promulgated thereunder, Gemini Networks CT, Inc. ("Gemini") respectfully requests that the Department declare that certain hybrid fiber coax ("HFC") facilities owned by the Southern New England Telephone Company ("SNET") and formerly leased to SNET Personal Vision, Inc. ("SPV") constitute unbundled network elements ("UNEs") and as such must be tarified and offered on an element by element basis for lease to Gemini at total service long run incremental cost ("TSLRIC") pricing. Should the Department determine that such plant does constitute UNEs subject to appropriate unbundling and pricing in accordance with this request, Gemini requests that the Department immediately initiate a cost of service proceeding to determine the appropriate pricing structure, based on TSLRIC, for such UNEs. Gemini requests that the Department order SNET to file an inventory of all plant formerly leased to SPV including the condition of all such plant and the disposition of any plant no longer in place.

Gemini attempted to enter into negotiations with SNET for lease of portions of the HFC facilities pursuant to state and federal law. However, SNET refused to negotiate for the lease of the HFC facilities as SNET declared that such facilities are not UNEs and therefore not subject to unbundling or regulation as UNEs. Thus, Gemini is filing this request that the Department declare the HFC facilities to be UNEs so that Gemini may re-enter negotiations with SNET to obtain access to certain of the UNEs pursuant to applicable pricing and regulations, as further discussed herein below.

Gemini submits that its request furthers the goals of the State of Connecticut codified in General Statutes § 16-247(a) to promote the development of effective competition, facilitate the efficient development and deployment of an advanced telecommunications infrastructure and encourage the shared use of existing facilities. Gemini further submits that its request will benefit all parties, in that it will promote competition to the benefit of consumers, assist Gemini in the rapid deployment of its network and services, and provide revenue to SNET for currently unused portions of its network.

I. Background.

Gemini is a Delaware corporation authorized to do business in Connecticut. Gemini operates broadband network facilities in Connecticut as authorized by the Connecticut Department of Public Utility Control ("the Department") and holds a certificate of public convenience and necessity ("CPCN") to operate as a certified local exchange carrier ("CLEC") in Connecticut. Gemini currently provides Internet services in parts of Connecticut and seeks a favorable determination in this proceeding in order that it can proceed with the deployment of voice services in accordance with its CPCN.

On December 29, 1994, SNET first filed its I-SNET Technology Plan with the Department. SNET announced construction of I-SNET, "... which included statewide outside plant modernization utilizing HFC and switch upgrades."¹ SNET revised its I-SNET Technology Plan, filing the revised plan with the Department on April 11, 1995 (the "Plan"). The Plan described I-SNET as a "full service network that can provide a full suite of voice, data and video services."² The goal of the I-SNET plan was "the transformation of Connecticut's existing infrastructure into a robust, multifunctional core capable of supporting a variety of information, communications and entertainment applications. I-SNET will supersede the Company's existing infrastructure. . . ."³ I-SNET deployment included the total migration of the interoffice transport network to

¹ Decision, Docket No. 99-04-02, Application of SNET Personal Vision, Inc. to Modify Its Franchise Agreement, August 25, 1999 at 4 ("SPV Modification Decision").

² Decision, Docket No. 94-10-03, DPUC Investigation Into The Southern New England Telephone Company's Intrastate Depreciation, November 31, 1995 at Table B, p. B.

³ Id. (emphasis added).

a SONET-based digital broadband platform and retirement of the existing embedded base of copper cable, circuit switching, computing and associated common and complimentary assets.⁴ I-SNET was to become the local exchange network.

Subsequent to the filing of SNET's I-SNET Technology Plan, SPV applied to the Department and was granted a statewide CATV franchise to provide video services over the I-SNET network.⁵ SPV leased network capacity from SNET for purposes of deploying SPV cable television services. SPV was responsible for certain direct costs relating to video and 50% of the HFC costs. The basis for this cost-sharing arrangement was the prospect that each home that passed the HFC network would subscribe to SNET telephone service and SPV cable service.⁶ The HFC network was planned and designed both to serve voice customers and to provide transport for video services. In effect, the HFC network was designed to be used as SNET's local exchange network. Therefore, the portions of the I-SNET HFC network that were used or proposed to be used by SNET for transport of voice traffic constitute part of the SNET local exchange network and are subject to UNE unbundling requirements.⁷

Approximately five years after receiving its CATV CPCN, SNET and SPV applied for and secured Department approval to relinquish the SPV CPCN.⁸ In granting the SPV relinquishment request, the Department recognized the public interest benefits of making the I-SNET network available to other carriers.⁹ The Department urged SNET to liberalize its unbundling policies and strongly suggested that SNET should file a tariff and take such other action as would assist other communications companies, such as Gemini, to develop their networks, including up to complete end-to-end connectivity. The Department stated that it expected any party aggrieved by SNET's failure to work in good faith to that end, to notify the Department.¹⁰

⁴ Id. at p. C.

⁵ Docket No. 96-01-24.

⁶ SPV Modification Decision at 4-5.

⁷ Id.

⁸ Decision, Docket No. 00-08-14, Application of Southern New England Telecommunications Corporation and SNET Personal Vision, Inc. to Relinquish SNET Personal Vision, Inc.'s Certificate of Public Convenience and Necessity, March 14, 2001 ("SPV Relinquishment Decision").

⁹ Id. at 31

¹⁰ Id.

Finally, the Department directed SNET not to sell, transfer or remove any of the I-SNET HFC network used by SNET or SPV without prior submission of an organized disposition plan and Department approval.¹¹ It is Gemini's understanding that, to date, SNET has made no such filings with respect to the HFC plant that is the subject of this Petition.

II. The HFC Plant is a UNE.

Despite SNET's bald assertion that the HFC plant which is the subject of this Petition is not a UNE and not subject to unbundling,¹² ample case law exists which makes clear that the HFC plant is in fact a UNE subject to unbundling. A network element is "a facility or equipment used in the provision of a telecommunications service."¹³ As demonstrated in Section I above, SNET's HFC plant was designed and constructed to provide voice service.

In the Fourth Circuit, Bell Atlantic had claimed that equipment must be in actual use, and not merely capable of being used to qualify as a network element. The Court rejected this argument.¹⁴ The Court held that such an interpretation placed undue weight on the word "used" and was contrary to the United States Supreme Court's acknowledgement that "network element" is broadly defined.¹⁵

In agreeing with the broad definition of network element, the Eastern District of Michigan, citing the Southern District of Iowa, held:

A limiting definition of network element, such as the one offered by US West, would allow an ILEC to avoid making equipment available to CLECs merely because the equipment is not necessarily in use. For example, a local loop servicing a particular residence, which is in all other respects a network element, would not be available to a CLEC if the house was temporarily vacant and not subscribing to telephone service. This result is inconsistent with the scope of the language of the Act as interpreted by the FCC. See 47 C.F.R. § 51.319(a) (providing

¹¹ *Id.* at 32.

¹² *See* Section IV and n.44, *infra*.

¹³ 47 U.S.C. § 153(29).

¹⁴ *AT&T Communs. of Virginia v. Bell Atlantic-Virginia*, 197 F.3d 663, 672 (1999) *citing* *US West Communications, Inc. v. Jennings*, 46 F. Supp. 2d 1004, 1018-19 (D. Ariz. 1999); *MCI Telecomms. Corp. v. BellSouth Telecomms., Inc.*, 40 F. Supp. 2d 416, 425 (E.D. Ky. 1999).

¹⁵ *Id.* *citing* *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999)

that an ILEC must provide nondiscriminatory access to local loops on an unbundled basis).¹⁶

The Eastern District of North Carolina has ruled that it is irrelevant whether the facilities in question are actually being used to provide telephone service to any consumer.¹⁷

Additionally, the Federal Communications Commission ("FCC") has ruled that "incumbent LECs must provide unused copper transmission facilities as an unbundled network element, to the extent such facilities exist."¹⁸

Thus, the only relevant inquiry according to FCC rules is whether "the failure to provide access to such . . . element[] would impair the ability of the [CLEC] seeking access to provide the services that it seeks to offer."¹⁹ As previously stated, access to portions of SNET's HFC plant is necessary for Gemini to continue with its business plan and proceed with the deployment of voice services in accordance with its CPCN. Moreover, denying Gemini access to portions of the HFC plant as UNEs would force Gemini to construct duplicative facilities when such facilities already exist and are not being used. Such is contrary to Connecticut state telecommunications law.²⁰

III. Federal and State Law Require Lease of UNEs to Gemini Upon Request

Federal and state law require that SNET make available to Gemini non-discriminatory access to UNEs at reasonable, nondiscriminatory terms and conditions.²¹

¹⁶ MCI Telecomms. Corp. v. Michigan Bell Tel. Co., 79 F. Supp. 2d 768 (E.D. Mich. 1999) (citations omitted).

¹⁷ MCI Telecomms. Corp. v. BellSouth Telecomms., Inc., 7 F. Supp. 2d 674 (E.D. N.C. 1988).

¹⁸ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 F.C.C.R. 3696 at ¶ 174 (1999).

¹⁹ 47 U.S.C. § 251(d)(2)(B).

²⁰ See Conn. Gen. Stat. § 16-247a.

²¹ 47 U.S.C. § 251(c) provides in pertinent part as follows:

"(c) Additional obligations of incumbent local exchange carriers.

In addition to the duties contained in subsection (b), of this section, each incumbent local exchange carrier has the following duties:

...

(3) Unbundled access.

Federal law requires that Gemini be provided with access to UNEs.²² SNET has wrongly denied Gemini access to portions of SNET's HFC network. The HFC network elements requested by Gemini are essential to its ability to provide the telecommunications services that it seeks to offer in Connecticut. Gemini has designed and constructed an initial HFC network in Connecticut, but requires access to additional, cost-effective HFC facilities in portions of the Connecticut market in order to serve Connecticut residents and businesses.²³

The duty to provide to any requesting telecommunications carrier for the provision of telecommunications services, non-discriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms and conditions that are just, reasonable and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 of this title. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service."

²² 47 U.S.C. § 251(d) provides in pertinent part as follows:

"(d) Implementation.

...
(2) Access Standards.

In determining what network elements should be made available for purposes of (c)(3) of this section, the [Federal Communications] Commission should consider at a minimum whether -

(A) Access to such network elements are as proprietary in nature is necessary; and

(B) The failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer." [Bracketed material supplied.]

Conn. Gen. Stat. § 16-247b requires the unbundling of network elements, services and functions used to provide telecommunications services which are in the public interest, consistent with federal law and technically feasible of being tariffed and offered separately or in combinations at rates, terms and conditions that do not unreasonably discriminate among actual and potential users and providers of such local network services.

Conn. Gen. Stat. § 16-247b(b) provides that SNET must provide "reasonable nondiscriminatory access and pricing to all telecommunications services, functions and unbundled network elements and any combination thereof necessary to provide telecommunications services to customers.

²³ Gemini has the requisite Department authorizations to offer these services, with respect to those services over which the Department has jurisdiction. Of course, Gemini has the right to use UNEs for any purpose that it chooses, subject to compliance with federal and State of Connecticut laws and regulations. SNET may not dictate or otherwise limit the services that Gemini offers.

Use of portions of SNET's HFC network in some parts of Connecticut, rather than building a duplicative network, will also fulfill the Connecticut statutory goals of facilitating the efficient development and deployment of an advanced telecommunications infrastructure, including open networks with maximum interoperability and interconnectivity, and of encouraging the shared use of existing facilities.²⁴

Both the Department and the FCC have adopted rules and policies designed to make UNEs available to authorized telecommunications carriers such as Gemini.²⁵ FCC rules impose on SNET a duty to negotiate in good faith with Gemini.²⁶ The FCC has provided examples of bad-faith negotiating conduct.²⁷ For example, ILECs like SNET cannot impose limits, restrictions or use requirements on UNEs.²⁸ Further, SNET must grant the same quality and quantity of access to UNEs to Gemini that it granted to its affiliate SPV.²⁹ SNET must allow Gemini to combine UNEs in a way in which Gemini desires to provide its intended telecommunications service.³⁰ There are a variety of additional obligations to which ILECs like SNET must adhere. The purpose and spirit behind the FCC's negotiating requirements are to make feasible, promote, and expedite use of incumbent local exchange facilities for development of competitive, new and innovative telecommunications services to residents and businesses – in this case, Connecticut residents and businesses.³¹

²⁴ Conn. Gen. Stat. § 16-247a(a)(4) and (5).

²⁵ 47 C.F.R. §§ 51.301, et seq.; see 47 C.F.R. § 307 in particular.

²⁶ 47 C.F.R. § 51.301(a).

²⁷ 47 C.F.R. § 51.301(b).

²⁸ 47 C.F.R. § 51.309.

²⁹ 47 C.F.R. § 51.311(a).

³⁰ 47 C.F.R. § 51.315.

³¹ Unfortunately, Gemini is no longer engaged in the UNE negotiation process with SNET, as SNET has declared the HFC plant to be, in its belief, not subject to the UNE process. At such time as the Department rules that the HFC plant is a UNE subject to unbundling, Gemini will reinitiate the negotiation process with SNET pursuant to the prescribed method under federal law, including any necessary mediation or arbitration. However, while such negotiation procedures are available to Gemini in the event that the Department issues a favorable ruling in this proceeding, Gemini respectfully requests that the Department consider ordering expedited action on SNET's part to make the requested UNEs available to third parties such as Gemini. Reinstatement of the negotiation process subsequent to a favorable ruling in this proceeding will further delay Gemini's access to portions of the HFC network and provision of competitive services to Connecticut residents. SNET has every incentive to utilize such procedures to delay competition as long as possible. Since the DPUC has already made clear to SNET

SNET must make the UNEs requested by Gemini available at TELRIC pricing,³² although as described below TSLRIC pricing may be more appropriate.

State public utility commissions are authorized under federal law to establish access and interconnect obligations of ILECs such as SNET.³³ The State of Connecticut, prior to implementation of the federal Telecommunications Act, enacted legislation that in large part imposes the same access and interconnect obligations on SNET as the federal Act.³⁴ The Department has made repeated policy statements in favor of competitive telecommunications service offerings to Connecticut residents and businesses.³⁵

The Connecticut General Assembly has succinctly stated Connecticut's telecommunications policy goals:

Sec. 16-247a. Goals of the state. Definitions. (a) Due to the following: Affordable, high quality telecommunications services that meet the needs of individuals and businesses in the state are necessary and vital to the welfare and development of our society; the efficient provision of modern telecommunications services by multiple providers will promote economic development in the state; expanded employment opportunities for residents of the state in the provision of telecommunications services benefit the society and economy of the state; and advanced telecommunications services enhance the delivery of services by public and not-for-profit institutions, it is, therefore, the goal of the state to (1) ensure the universal availability and accessibility of high quality, affordable telecommunications services to all residents and businesses in the state, (2) promote the development of effective competition as a means of providing customers with the widest possible choice of services, (3) utilize forms of regulation commensurate with the level of competition in the relevant telecommunications service market, (4) facilitate the efficient development and deployment of an advanced telecommunications infrastructure, including open networks with maximum interoperability and interconnectivity, (5) encourage shared use of existing facilities and cooperative development of new facilities

that the public interest favors making the HFC network available to third parties seeking to use it, see n.36, infra, expedited action is appropriate.

³² Verizon Communications, Inc. et al v. FCC, 535 U.S. 467 (2002).

³³ 47 U.S.C. § 251(c)(3).

³⁴ Codified at Conn. Gen. Stat. § 16-247a et seq.

³⁵ See, e.g., Proposed Framework for the Implementation of Public Act 94-83 and Commentary from Chairman Reginald J. Smith, Presented at the June 23, 1994 Technical Meeting, Docket No. 94-05-26, General Implementation of Public Act 94-83; and most recently Scope of Proceeding, Docket No. 02-04-22, DPUC Evaluation of the Transition of the Connecticut Telecommunications Market to Competition, May 15, 2002, among many others.

where legally possible, and technically and economically feasible, and (6) ensure that providers of telecommunications services in the state provide high quality customer service and high quality technical service. The department shall implement the provisions of this section, sections 16-1, 16-18a, 16-19, 16-19e, 16-22, 16-247b, 16-247c, 16-247e to 16-247i, inclusive, and 16-247k and subsection (e) of section 16-331 in accordance with these goals.

The Department itself has already tacitly recognized the HFC network formerly utilized by SPV as a telecommunications network subject to regulation. In its Decision in Docket No. 00-08-14, considering the disposition of the network as a cable television facility, the Department stated:

In the absence of any formal requirement for the Telco to liberalize its collocation and unbundling policies, the Department encourages the Telco to work with prospective video services providers interested in acquiring more technical services and support than the Telco's currently tariffed services offer. The Department fully understands that [sic] limits of the Telco's legal obligation under federal law to support unbundling and collocation, but the Department also believes that it has independent authority under Conn. Gen Stat. §§ 16-247a(a)(2), 16-247b(b) and 16-247k(b)(4) to pursue such measures as it deems necessary to achieve the expressed goals of the Connecticut General Assembly in Public Act 94-83. Therefore the Department encourages the Telco to work and negotiate in good faith with any party interested in developing such an arrangement (i.e., complete end-to-end connectivity), and would expect any party aggrieved under the Telco's failure to do so, to formally notify the Department. Upon such a showing, the Department will be compelled to consider a generic investigation to update and review implications of collocation and advanced service policies pursuant to provisions and current interpretations of the Telcom Act.³⁶

Unbundled network elements, among other services and functions, must be offered, under tariff "... at rates, terms and conditions that do not unreasonably discriminate among actual and potential users and actual and potential providers of such local network services."³⁷

³⁶ SPV Relinquishment Decision at 31-32 (emphasis added)

³⁷ Conn. Gen. Stat. § 16-247b(a)

The FCC requires the use of TELRIC pricing;³⁸ the Department mandates TSLRIC as a basis for UNE pricing, which must be under tariff.³⁹

Prior to passage of the federal Telecommunications Act in 1996, the Department was already in the process of implementing telecommunications competition in Connecticut based on the passage of Public Act 94-83. As part of its investigation into UNE pricing methodologies, the Department evaluated TELRIC pricing and rejected it.⁴⁰ The Department found that "[t]he TSLRIC methodology represents a modification of the [TELRIC] approach by utilizing total demand for a service as the base for calculating the incremental cost of addition, replacement or enhancement to the service. This produces a forward-looking cost similar to the [TELRIC] methodology, but reduces some of the economic distortions that might otherwise emerge using a narrower base of analysis."⁴¹ The Department also "place[d] SNET on notice that in the future it must be prepared to efficiently conduct cost studies on any service or service elements that are deemed necessary by this Department for competitive access to, and/or use of, SNET's infrastructure. Any failure by SNET to meet the prescribed requirements to perform such analysis and render satisfactory results could be construed as an intentional effort to impede the implementation of Public Act 94-83 and would not be considered lightly by this Department."⁴² Gemini accordingly requests that the Department initiate a cost of service proceeding to determine the appropriate TSLRIC pricing for the UNEs which Gemini is requesting.⁴³

³⁸ 47 C.F.R. § 51.505

³⁹ Conn. Gen. Stat. § 16-247b(a).

⁴⁰ Decision, Docket No. 94-10-01, DPUC Investigation Into the Southern New England Telephone Company's Cost of Providing Service, June 15, 1995. See also, Decision, Docket No. 96-09-22, DPUC Investigation Into the Southern New England Telephone Unbundled Loops, Ports and Associated Interconnection Arrangements and Universal Service Fund in Light of the Telecommunications Act of 1996, April 23, 1997 at 6, n.1

⁴¹ Decision, Docket No. 96-09-22, DPUC Investigation Into the Southern New England Telephone Unbundled Loops, Ports and Associated Interconnection Arrangements and Universal Service Fund in Light of the Telecommunications Act of 1996, April 23, 1997 at 8.

⁴² Decision, Docket No. 94-10-01, DPUC Investigation Into the Southern New England Telephone Company's Cost of Providing Service, June 15, 1995.

⁴³ The 11th Circuit has held that use of TSLRIC as an economic cost basis for use of an ILEC's network is improper as a result of the U. S. Supreme Court's ruling in Verizon Communications, Inc. v. FCC, 535 U.S. 467 (2002), which found that the FCC did not act unreasonably in requiring state utility commissions to set rates charged by ILECs for leased elements based on TELRIC as opposed to TSLRIC. MCI Telecomms Corp. v. BellSouth Telecomms., Inc., 298 F.3d 1269 (11th Cir. 2002)

In summary, there is a clear-cut history and record at the Department of SNET's transactions with its affiliate, SPV. It is anti-competitive and discriminatory for SNET to refuse to provide UNEs from SNET's HFC network to Gemini. SNET must provide the UNEs to Gemini, priced at rates based on TSLRIC via tariffs approved by the Department, consistent with federal and Connecticut statutory and regulatory authority and policy.

IV. Negotiations with SNET.

On June 25, 2002, Gemini formally requested negotiations with SNET to lease portions of SNET's HFC network formerly utilized by SPV pursuant to 47 U.S.C. §§ 251(c)(1), 251(c)(3) and 252(a)(1). On July 3, 2002, SNET responded to Gemini's request, inviting negotiations, but rejecting without explanation Gemini's assertion that portions of the HFC network constituted UNEs. Gemini and SNET met on several occasions in an attempt to resolve their differences. Ultimately, SNET advised Gemini on September 10, 2002 that it does not believe that the HFC facilities formerly utilized by SPV are subject to unbundling.⁴⁴

Gemini has some information regarding the HFC network. Gemini is not providing specific details herein as it has executed a nondisclosure agreement with SNET. Nonetheless, Gemini is specifically requesting that the entire HFC network formerly utilized by SPV be unbundled, tariffed and offered as UNEs in accordance with state and federal law.

V. Conclusion.

WHEREFORE, Gemini respectfully requests that:

- a. the Department declare that the HFC network formerly leased by SPV is subject to unbundling and tariffing as UNEs pursuant to Conn. Gen. Stat. § 16-247b(a);
- b. the Department initiate an expedited cost of service proceeding to determine the rates at which such UNEs will be offered pursuant to Conn. Gen. Stat. § 16-247b(b); and

⁴⁴ SNET provided no legal argument to support its theory, despite the fact that Gemini thoroughly stated its legal position to SNET in substantially the same form as provided herein. SNET merely stated that it "has no desire to entertain a lease of the facilities to Gemini or any other party." SNET letter to Gemini, September 10, 2002

- c. the Department order SNET to provide an immediate inventory of the remaining HFC plant, including the condition of such plant and an itemized list of any portions of the plant previously disposed of.

Gemini respectfully requests that this proceeding be expedited. Gemini further requests that, in the event that the Department concludes that testimony or other evidence is relevant to a decision on this matter, the Department clarify the issues on which pre-filed testimony would be relevant and material.

Respectfully submitted,

GEMINI NETWORKS CT, INC.

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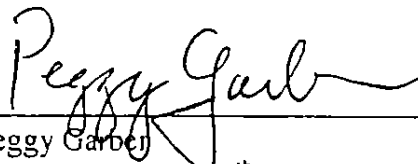
c: Office of Consumer Counsel
Peggy Garber, VP, General Counsel and Secretary, SNET

very least, the Department's role in unbundling the telecommunications network will be clarified.

If the matter is permitted to proceed, the Department should issue a procedural order to: (1) require Gemini to amend the Petition to identify (a) the features and/or functions of "the entire HFC network" that it seeks to unbundle, (b) how the requested UNE will be used for interconnection and/or access to the local telecommunications network, and (c) why the existing UNEs offered by the Telco do not satisfy Gemini's needs; (2) bifurcate the proceedings into two phases with only the legal issues addressed in phase one and Gemini's request for a cost study and inventory addressed in phase two; (3) order that phase one, which only addresses legal issues, does not require any discovery or hearings, but will be resolved based on briefs submitted by the parties; (4) if any discovery is permitted in phase one, limit discovery to information specifically required to resolve the legal issues; and (5) deny Gemini's request for any inventory in phase one as unnecessary to the resolution of the legal issues of whether unbundling is required, deferring such discovery until phase two.

Respectfully submitted,

**THE SOUTHERN NEW ENGLAND
TELEPHONE COMPANY**

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January 21, 2003